

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.,
Petitioner,

v.

VOICE TECH CORPORATION,
Patent Owner.

Case IPR2020-01018
Patent 10,491,679 B2

Before GEORIANNA W. BRADEN, JOHN F. HORVATH, and
MICHAEL T. CYGAN *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request on Rehearing
of Final Written Decision
37 C.F.R. § 42.71(d)

I. INTRODUCTION

On December 13, 2021, we entered a Final Written Decision determining that Unified Patents, Inc. (“Petitioner” or “Unified”) had shown, by a preponderance of evidence, that claims 1–8 of U.S. Patent No. 10,491,679 B2 (Ex. 1001, “the ’679 patent”) are unpatentable. Paper 46 (“Final Dec.” or “Decision”).

On January 12, 2022, Voice Tech Corporation (“Patent Owner”) filed a Request for Rehearing, asking us to reconsider our Decision. Paper 47 (“Reh’g Req.”). The same day, Patent Owner also asked the Precedential Opinion Panel to review our Decision. Ex. 3006. On March 3, 2022, the Precedential Opinion Panel denied Patent Owner’s request and ordered this panel to consider Patent Owner’s Request for Rehearing. Paper 51, 2. For the reasons discussed below, the Request for Rehearing is *denied*.

II. ANALYSIS

A party requesting rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d). The burden of showing a decision should be modified on a request for rehearing lies with the party challenging the decision. *Id.* A rehearing request is not an opportunity for the requesting party to reargue its case or express disagreement with the Final Written Decision. Nor is it an opportunity for the moving party to present new arguments that were not in its original submissions.

A. *Real Party-in-Interest*

Patent Owner asks us to reconsider our decision declining to determine whether Mycroft AI Inc. (“Mycroft”) is an unnamed real party-in-

interest (“RPI”) and declining to terminate the proceeding for Petitioner’s failure to identify Mycroft as an RPI. Reh’g Req. 2–7. Patent Owner argues we misapprehended its “arguments, related statutes and regulations, [and] related case law.” *Id.* at 3. Patent Owner further argues that because, in its view, Mycroft is an unnamed RPI in this proceeding, Mycroft “will not be estopped from raising the same invalidity arguments” raised by Unified in the ongoing patent infringement case between Mycroft and Patent Owner. *Id.* at 4. Patent Owner also argues that, “from a policy standpoint, the Board must enforce the RPI disclosure requirement by dismissing this IPR proceeding.” *Id.*

We disagree that we misapprehended Patent Owner’s arguments, which are based on a mistaken belief that for a party to be estopped under 35 U.S.C. § 315(e) that party must have been identified as an RPI in an *inter partes* review. *See* Reh’g Req. 6. The § 315(e) estoppel provisions are prospective—they apply to the petitioner, its RPIs, and its privies who commence or maintain an action *after* a final written decision has issued. 35 U.S.C. § 315(e); *see also Intuitive Surgical, Inc. v. Ethicon LLC*, 25 F.4th 1035, 1041 (Fed. Cir. 2022) (“The plain language of § 315(e)(1) is clear that estoppel is triggered when an IPR proceeding results in a final written decision.”). For that reason, § 315(e) does not require the RPIs and privies of the petitioner to be determined *before* the final written decision issues. As we previously explained, our Decision was the first “final written decision as to any claim of the ’679 patent. Thus, even if we were to determine that Mycroft is an unnamed RPI, § 315(e)(1) would prevent Mycroft from requesting a *future* proceeding challenging a claim at issue in this proceeding” but does not require terminating this proceeding. Final

Dec. 6–7; *see also VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 Fed. Appx. 897, 903 (Fed. Cir. 2019) (“[e]ven if we agree that [a third party] was a real party in interest, there would be no reason to terminate these proceedings”).

We also disagree with Patent Owner’s argument that as a matter of policy, the Office must enforce the RPI disclosure requirement by terminating *any* proceeding in which a party failed to identify an RPI. *See* Reh’g Req. 4 (“from a policy standpoint, the Board must enforce the RPI disclosure requirement by dismissing this IPR proceeding” because “[o]therwise, there is no punishment for violating the RPI disclosure requirement”). The Office’s policies are expressed, *inter alia*, through its properly promulgated rules, procedures, and precedential opinions. Patent Owner cites none of these to support its contention that “policy” requires the Board to terminate a proceeding simply because a petitioner allegedly failed to comply with its RPI disclosure requirements. Reh’g Req. 2–7. To the contrary, the Federal Circuit has found that “unwinding the proceedings based on a strict view of the real party-in-interest disclosure requirement would be at odds with the PTO policy expressed in [37 C.F.R.] § 42.1(b).” *Mayne Pharma Int’l Pty. Ltd. v. Merck Sharp & Dohme Corp.*, 927 F.3d 1232, 1240 (Fed. Cir. 2019)); *see also VirnetX*, 778 Fed. Appx. at 903 (“[e]ven if we agree that [a third party] was a real party in interest, there would be no reason to terminate these proceedings” because “[t]here is no evidence in the record that [the third party] is time-barred”). We decline to decide this case based on Patent Owner’s supposed “policy” considerations, which are unsupported by binding case law or any declared Patent Office policy.

For the reasons discussed above, we are not persuaded that we misapprehended Patent Owner’s arguments or the statutes, regulations, and related case law regarding the real party-in-interest disclosure requirement when we (a) declined to determine whether Mycroft was an unnamed RPI of Petitioner or (b) declined to terminate this proceeding.

B. The “executing/generating” limitation

Patent Owner asks us to reconsider our finding that “the limitations of claims 5 and 7 were met for substantially the same reasons that the limitations of claims 1 and 3 were met.” Reh’g Req. 9. Patent Owner argues “claims 5 and 7 recite the audio command interface performing the ‘executing’ and ‘generating’ steps” and “Petitioner did not argue that the alleged audio command interfaces of Wong or Beauregard performed” these steps. *Id.* at 8 (emphasis omitted). Instead, Patent Owner contends, Petitioner argued that Wong’s “PC 210 performs the ‘executing’ step in claim 1” or that “an *application* in Wong” performs this step, but did not argue “that Beauregard’s alleged audio command interface (MIKE 330) is the component performing the ‘executing’ step.” *Id.* at 8–9 (citing Pet. 32, 35–37). Patent Owner also contends that Petitioner argued that “PC 210 performs the ‘generating’ step in claim 1” and “*did not suggest* that Wong’s alleged audio command interface (speech engine 213) performs the ‘generating’ step,” and did not mention “Beauregard’s allege[d] audio command interface (MIKE 330).” *Id.* at 9 (citing Pet. 37–38).

We disagree. Petitioner argued that the claim 5 limitations “are obvious for the same reasons as the corresponding limitations in claims 1 and 2,” and that the “corresponding limitations of [c]laims 1, 3, and 5 . . . show how each limitation of claim 7 is disclosed.” Final Dec. 39 (quoting

Pet. 50, 54). Two tables in the Petition map the “audio command interface,” “executing,” and “generating” limitations of claims 5 and 7, respectively, to corresponding limitations of claim 1 designated as limitations [1.1] (audio command interface), [1.4] (the “executing” limitation), and [1.5] (the “generating” limitation). *See* Pet. 51–52, 54–55 (citing *id.* at 20–27 (limitation [1.1]), 32–37 (limitation [1.4]), and 37–39 (limitation [1.5])).

In our Decision, we found “Petitioner’s claim 1 analysis demonstrates how the Wong/Beauregard audio command interface—i.e., Wong’s speech engine 213 modified to include logic from Beauregard’s MIKE 330—” teaches both the “executing” and “generating” limitations. Final Dec. 40–41 (citing Pet. 32–37). Patent Owner fails to demonstrate how this misapprehended or misunderstood Petitioner’s arguments. Indeed, on the very pages Patent Owner cites in support of its contention that Petitioner relied only on the teachings of Wong to meet the “executing” and “generating” limitations, the Petition expressly states “*Wong* alone, or in view of *Beauregard*, discloses or at least renders obvious” these limitations. Pet. 32, 37.

Petitioner’s analysis explains how components of Beauregard’s MIKE 330 teach the “executing” and “generating” limitations, and why a person skilled in the art would have modified Wong’s speech engine 213 to include them. Pet. 14–18, 35–39. Our Decision relies on and agrees with that analysis. Final Dec. 35–36, 40–41. As we found, when Wong’s speech engine 213 is modified to include components of Beauregard’s MIKE 330, “fetcher 220 searches wordbase 340 for a matching command, and command interpreter 430 executes a script associated with that command, which causes an application or the operating system to execute a process.” *Id.*

at 35–36 (citing Ex. 1005, 5:44–46, 16:41–45, 17:21–22, 17:33–36, 28:65–29:14), *id.* at 40. This satisfies the “executing” limitation, which requires Wong’s modified audio command interface to “execute *with* the selected . . . application the at least one process . . . in response to the command.” Ex. 1001, 10:65–67, 12:6–8 (emphasis added). Moreover, when “command interpreter 430 executes a script it ‘sends all keyboard related actions (replacements, special keys, and the like) associated with [the] fetched action words . . . to the applications 118.’” Final Dec. 40–41 (quoting Ex. 1005, 10:22–40, 29:13–17). This satisfies the “generating” output data limitation because the keyboard related actions that are sent by Wong’s modified audio command interface can be, for example, replacement text to correct a misspelling. *See* Ex. 1005, 29:17–21 (“when the action word entered by the user requires a substitution (e.g., ‘Junc’ to ‘June’) the command interpreter 430 forwards the replacement text to the application program”).

For the reasons discussed above, Patent Owner fails to demonstrate that we misapprehended or misunderstood Petitioner’s arguments in determining that the *combination* of Wong and Beauregard meets the “executing” and “generating” limitations of claims 5 and 7.

C. The “mobile device interface” limitation

Patent Owner asks us to reconsider our finding that claims 5–8 are unpatentable based on our “finding that the single reference to ‘built-in services’ was sufficient to make the entire argument for the ‘MDI’ [mobile device interface] limitations in claims 5 and 7.” *Reh’g* Req. 13. Patent Owner argues we misapprehended “the significance of Petitioner’s . . .

complete failure to even mention the ‘MDI’ limitation” because “Petitioner was required to address the ‘MDI’ limitation in its Petition.” *Id.* at 10.

We disagree. The last limitation of claim 1 recites “transmitting the output data to the mobile [de]vice.” Ex. 1001, 10:25 (“the transmitting limitation”). The last limitation of claims 5 and 7 recite “wherein a mobile device interface at the computer transmits the output data to the mobile device.” *Id.* at 11:4–5, 12:11–12 (the “mobile device interface limitation”). Petitioner argued the combination of Wong and Beauregard met the limitations of claims 5 and 7 for the same reasons it met the corresponding limitations of claims 1–3 and provided two tables mapping the limitations of claims 5 and 7, respectively, to the limitations of claims 1–3. Pet. 50–52 (claim 5), 54–55 (claim 7). Petitioner mapped the last limitation of claims 5 and 7 to the last limitation of claim 1, but mistakenly wrote the limitation as “transmitting the output data to the mobile device” rather than “wherein a mobile device interface at the computer transmits the output data to the mobile device.” *Id.* at 52, 55. In our Decision, we found this was a clerical error that simply misquoted the mobile device interface limitation “by reciting the function performed and omitting the structure that performs that function.” Final Dec. 42. We, nonetheless, found Petitioner had demonstrated how the mobile device interface limitation was met because Petitioner’s cross-referenced analysis “demonstrates not only how the combination of Wong and Beauregard performs the ‘transmitting’ function, but identifies the structure that performs the function.” *Id.* We had previously made similar findings in our Institution Decision. *See* Paper 10, 25–27.

Patent Owner argues we improperly considered arguments first raised in Petitioner’s Reply. *See* Reh’g Req. 10 (“Petitioner was required to address the limitation in its Petition” and the “Board relied on new arguments in Petitioner’s Reply”). We disagree. Although we found Petitioner’s Reply arguments were allowable, we did not rely on them in finding Petitioner had demonstrated how Wong taught the mobile device interface limitation. *See* Final Dec. 42–43. Specifically, we found Wong disclosed “PC 210 transmits generated output data to mobile device 202 over a GPRS network” and persons skilled in the art “would have known that ‘computer applications generally used built-in services of the computer operating system to provide *means to transmit output data* to other . . . devices.” *Id.* at 42 (citing Pet. 40–41; Ex. 1004 ¶ 68, Fig. 3; Ex. 1003 ¶¶ 63–68) (emphasis added). We further found “Petitioner’s claim 1 analysis demonstrates not only how the combination of Wong and Beauregard performs the ‘transmitting’ function, but identifies the structure that performs the function.” *Id.* (citing Pet. 39–41). All of these citations are to the Petition; none are to Petitioner’s Reply.

Next, Patent Owner argues we erred in finding Petitioner misquoted the mobile device interface limitation and demonstrated how that limitation was met because Petitioner never mentioned the term “mobile device interface” or addressed that limitation in its claim 1 analysis. *See* Reh’g Req. 10. We disagree. Petitioner’s cross-referencing tables for claims 5 and 7 reference Petitioner’s analysis of the “transmitting” limitation of claim 1 to demonstrate how the last limitation of claims 5 and 7 was met. Pet. 52, 55. Petitioner’s claim 1 analysis demonstrates not only that Wong’s PC 210 “transmit[s] the output data,” but that a person skilled in the art would have

known that PC 210 included built-in operating system services that transmit output data. *Id.* at 39–41 (citing Ex. 1004 ¶¶ 41, 68, Fig. 3; Ex. 1003 ¶¶ 63–68). The Petition did not need to identify these built-in services to demonstrate how the transmitting limitation of claim 1 was met, but did need to identify them to demonstrate how the mobile device interface limitation of claims 5 and 7 was met. This supports our finding that Petitioner simply misquoted the last limitation of claims 5 and 7.

Patent Owner next argues that we misapprehended the holding in *Elbit Systems of America, LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1358–59 (Fed. Cir. 2018) because “the point of *Elbit* is that there was no expert testimony on [a] limitation” and “[t]he Federal Circuit gave no credence to Elbit’s expert . . . because he had failed to even mention the limitation in his opinion.” *Reh’g Req.* 11–12. We disagree. *Elbit Systems* concerned the Board’s ability to weigh competing expert testimony. 881 F.3d at 1357. In *Elbit Systems*, the Board found the prior art failed to teach a claim limitation by crediting the testimony of patent owner’s expert over petitioner’s expert. *Id.* at 1358. The Federal Circuit found substantial evidence supported this finding and also found the Board was “entitled to weigh the credibility of the witnesses” because “[d]etermining the weight and credibility of the evidence is the special province of the trier of fact.” *Id.* Here, we have no competing expert testimony to weigh. Petitioner’s expert provided credible testimony that a person skilled in the art would have understood Wong’s PC 210 used built-in operating system services to transmit data to a mobile device. Ex. 1003 ¶ 63. Patent Owner has not introduced any competing or contradictory evidence that challenges that testimony. We explained this in our Decision and Patent Owner fails to demonstrate that this was error. *See*

Final Dec. 44–45.

Finally, Patent Owner argues that we misapprehended the holding in *Choirock Contents Factory Co., Ltd. v. Saucier*, 801 Fed. Appx. 754 (Fed. Cir. 2020) because that decision requires “clear identification of where the prior art teaches a limitation.” Reh’g Req. 12. We disagree. As explained by the Federal Circuit in *Choirock*, the Board had “rejected Choirock’s incorporation of its claim 2 argument because the petition did not cross-reference the claim 2 argument.” *Choirock*, 801 Fed. Appx. at 764. Moreover, on the merits, the Board had found Choirock’s analysis of claim 2 was “directed to whether [certain] components ‘have’ images, but failed to address the limitations of claims 7 and 8 requiring that the [components] move to expose previously unexposed images.” *Id.* Here, it is undisputed that Petitioner’s analyses of the last limitation of claims 5 and 7 reference its analysis of the transmitting limitation of claim 1. Pet. 39–47, 52, 55. Moreover, Petitioner’s claim 1 analysis demonstrates not only that Wong’s PC 210 transmits data to a mobile device, but that its “built-in services” are the “means” for transmitting that data, i.e., they are the “mobile device interface” required by claims 5 and 7. *Id.* at 39–41 (citing Ex. 1003 ¶¶ 63–68). We explained this in our Decision, and Patent Owner fails to demonstrate how that was error. Final Dec. 46.

D. The “decoding” limitation

Patent Owner asks us to reconsider our findings on “the meaning of ‘decoding’ and whether the combination of Wong/Beauregard renders claims 1–8 obvious.” Reh’g Req. 15. Patent Owner argues we erred by “rel[ying] on statements in Wong referring to speech engine 213 parsing audio data” and misapprehending that Wong defined “parsing” as “speech to

text translation.” *Id.* (emphasis omitted). Patent Owner further argues we erred in finding Wong’s disclosure of “identify[ing] voice commands” met the “decoding” limitation because there is “no support for finding that ‘decoding’ should be defined to mean ‘identifying.’” *Id.* at 13–14. We disagree.

First, Wong does not limit the meaning of “parsing” to performing “speech-to-text” translation.¹ As we noted in our Decision, “Wong expressly discloses ‘speech engine 213 [] is configured to *identify* voice commands and keywords.’” Final Dec. 30 (quoting Ex. 1004 ¶ 32). That Wong’s speech engine 213 “identifies” a command when it “parses” it is evident from Figure 4a. After “speech engine 213 parses [a] command” in step 404, it searches a keyword database in step 406 to determine whether “a word appears *in the command* that is not a command word or is in addition to the command word.” Ex. 1004 ¶ 39, Fig. 4a. To be able to make that determination, speech engine 213 must have “identified” the command as Wong expressly states. Ex. 1004 ¶ 32.

Second, as we also noted in our Decision, Patent Owner’s arguments are based on an embodiment of Wong that Petitioner does not rely on, i.e., an embodiment where mobile device 202 uses speech recognition module 240 to “parse” a command. Final Dec. 30–31; Ex. 1004 ¶¶ 44–45,

¹ Even if it did, that would be sufficient to meet the “decoding” limitation. The ’679 patent discloses “a voice command can be decoded by determining the equivalent word for a spoken word.” Ex. 1001, 8:25–27. Thus, if Wong’s speech engine 213 were limited to performing speech-to-text translation, as Patent Owner contends, Wong discloses decoding audio data into a command because the input to a “speech-to-text” translation engine is a “spoken word” and the output is an “equivalent [textual] word.”

Fig. 2. However, even in that embodiment, when speech recognition module 240 “parses” a command it “identifies” the command and its keywords. For example, Wong discloses speech recognition module 240 “*identifies* a keyword when spoken by a user.” Ex. 1004 ¶¶ 44–45. To be able to *identify* a keyword associated with a command, speech recognition module 240 must be able to *identify* the command itself. Wong’s smart phone 202 then sends a text message to PC 210 containing “a keyword . . . *with a command*,” which further evidences that Wong’s speech recognition module 240, like speech engine 213, “identifies” a command when it “parses” it. *Id.* ¶ 46.

Finally, as we also noted in our Decision, the Petition did not rely on Wong alone to teach the decoding limitation. *See* Final Dec. 29–31 (citing Pet. 27–29). Petitioner “proposes modifying [Wong’s] speech engine 213 to include logic from Beauregard’s MIKE 330 to . . . identify commands” and Beauregard identifies commands by “converting voice data to text, and providing the text to . . . command interpreter 430,” which “passes the text to fetcher 420, which searches wordbase 340 for matching action words.” *Id.* at 30–31. Thus, the *combination* of Wong and Beauregard teaches the decoding limitation, and Patent Owner neither disputes that finding nor demonstrates it was in error. *See* Reh’g Req. 13–15.

For the reasons discussed above, we disagree with Patent Owner’s contention that we erred in finding claims 1–8 unpatentable because we erred in finding the prior art taught or suggested an audio command interface that decodes audio data into a command.

III. CONCLUSION

For the reasons discussed above, Patent Owner has failed to demonstrate that we misapprehended or overlooked any matters in the Final Written Decision. Accordingly, we deny Patent Owner's Request for Rehearing.

Outcome of Decision on Rehearing:

Claims	35 U.S.C §	Reference(s)/Basis	Denied	Granted
1-8	103(a)	Wong, Beauregard	1-8	
Overall Outcome			1-8	

Final Outcome of Final Written Decision after Rehearing

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1-8	103(a)	Wong, Beauregard	1-8	
1-8	103(a)	Ben-Efraim, Balakrishnan ²		
Overall Outcome			1-8	

IV. ORDER

It is ORDERED that Patent Owner's Request for Rehearing is *denied*.

² Because we find these claims unpatentable on other grounds, we do not consider their patentability over Ben-Efraim and Balakrishnan.

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